

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

BEDFORD FAIR APPAREL, INC.

Employer

and

Case No. 11-RC-6419

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES,
AFL-CIO, CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds: 1/

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 2/

All production and maintenance employees employed by the Employer at its Wilmington, North Carolina, facility, including employees in its inbound, outbound, and maintenance departments, mail order employees, data entry employees, and MIS employees, but excluding office clerical employees, temporary employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees

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engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by

Union of Needletrades, Industrial and Textile Employees, AFL-CIO, CLC

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that an election eligibility list, containing the full names and addresses of all the eligible voters, must be filed by the Employer with the Regional Director for Region 11 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. I shall, in turn, make the list available to all parties to the election.

In order to be timely filed, such list must be received in the Regional Office of the National Labor Relations Board, Region 11, 4035 University Parkway, Suite 200, P. O. Box 11467, Winston-Salem, North Carolina 27116-1467, on or before **October 9, 2000**. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission. Since the list is to be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. To speed preliminary checking and the voting process itself, the names should be alphabetized (overall or by department, etc.).

If you have any questions, please contact the Regional Office.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **October 16, 2000**.

Dated October 2, 2000

at Winston-Salem, North Carolina

/s/Willie L. Clark, Jr.

Regional Director, Region 11

- 1/ On September 22, 2000, the Hearing Officer in this matter issued an Order Receiving Exhibits and Closing Hearing wherein she received into evidence documents identified as exhibit 3 of the Employer and closed the hearing. This Order Receiving Exhibits and Closing Hearing was served on the parties. However, the Order was then inadvertently omitted from the official Board exhibits. In an effort to rectify this omission and to make the official record complete, I now include the Order Receiving Exhibits and Closing Hearing of the Hearing Officer as exhibit 3 of the Board.
- 2/ The Employer is a Delaware corporation with a facility located in Wilmington, North Carolina, where it is engaged in the warehousing and non-retail distribution of textile products. During the past 12-month period, the Employer has sold and shipped goods and materials valued in excess of \$50,000 directly to points located outside the State of North Carolina. During this same period, the Employer has purchased and received goods, materials and services valued in excess of \$50,000 directly from points located outside the State of North Carolina.

Both the Employer and the Petitioner filed briefs which have been carefully considered.

The Petitioner seeks a unit of production and maintenance employees. The parties agree as to the scope and composition of the unit except that the Petitioner takes the position that the MIS, data entry and mail order employees are office clerical employees who should be excluded from the unit. Also, the Petitioner would exclude from the unit as seasonal employees the temporary employees who have been employed to work at the Employer's facility during the peak season prior to Christmas. The Employer argues that the MIS, data entry and mail order employees are plant clerical employees and that they, as well as those employees employed for the peak season, should be included in the appropriate unit. There are approximately 272 employees in the unit found appropriate herein.

The Employer operates a business from its Wilmington, North Carolina, facility whereby it sells articles of clothing to the public by displaying its products for sale in various catalogues which are periodically disseminated to potential customers. Its customers place their orders to purchase with the Employer either by mail, fax or telephone. Those orders placed by mail or fax are received by the Employer at its Wilmington location. All orders placed by a telephone call from a customer are received by the Employer at its customer service telemarketing center in Tucson, Arizona. Neither party contends that the employees of the Employer who are employed at its Tucson location should be included in the unit found herein.

The Employer separates its employees into five groups which at times during the hearing were identified as five departments. Of these five groups, the Petitioner seeks to represent only those approximately 240 employees who work in the inbound, outbound and maintenance departments. The inbound department is essentially the receiving department for the Employer. The employees in the inbound department receive the goods delivered to the Employer from its various vendors, count those goods, verify those goods with the packing slip provided by the vendor, key information regarding the goods into the computerized inventory system, and then pass the goods on for quality assurance inspection which is also a function of the inbound department. The record shows that there are about 15 to 20 lines for working in the inbound department, and each work line has a computer. Approximately 16 employees in the inbound department spend 70 percent of their work time keying information into the computer system of the Employer. There are four or five computer terminals for quality assurance employees to use. One quality assurance employee spends about 95 percent of his work time keying in information and another quality assurance employee also devotes 50 to 60 percent of his work time to keying in information to the computerized system of the Employer. The inbound department is additionally responsible for processing goods which are returned to the Employer from its customers. Each of the approximately 22 employees who handle returns of goods has his own desk

and a computer terminal, and these 22 employees spend about 40 to 50 percent of their work time entering information into their computers.

The outbound department incorporates those employees who perform picking work. These employees utilize labels, picking slips and invoices to actually pick the garment to be shipped. The item which is picked then goes to a shipping area where it is prepared for shipment to the customer. The employees who perform shipping work are also included in the outbound department. At least one employee in the picking section performs data entry work on the single computer located there. This computerized information concerns items which are returned to the pickers to be repicked. Another employee in the shipping area also performs data entry functions to enable the Employer to track the packages shipped to its customers.

The parties are in agreement that the employees of the Employer in its maintenance department should be included in the bargaining unit while the employees in the Human Resources department should properly be excluded.

The fifth department, which is primarily involved in the process of customer orders and which is the department in dispute herein, is a conglomerate of about 31 employees working in three defined areas. These three separate groups of employees are referred to in the record as data entry, mail order and MIS. While the Petitioner claims that all of these employees should be excluded from the bargaining unit because they are essentially office clerical employees, the Employer conversely maintains that they should be included because they are all plant clericals who share common interests with the production and maintenance employees the Petitioner seeks to represent. The employees in data entry and mail order receive a starting wage of \$6.50 an hour while production and maintenance employees in the agreed upon unit are given an initial pay rate of \$6.00 per hour. All employees receive the same benefits and are subject to the same rules of the Employer.

There are 12 to 13 employees who work in the mail order section who are responsible for handling the approximately four thousand pieces of mail the Employer receives each day and any orders by fax which the Employer may receive. Mail is received during three time periods, and once it is received it is counted, opened, separated between payment by checks and payments charged to an account, and placed in batches of 25 pieces for processing by data entry employees. A designated mail order employee is assigned to take checks received for orders to a bank. The mail order employees use a calculator to reconcile the checks and cash received with the order. They also may utilize a computer to cancel the back order of a customer or to remove or add a customer from the mailing list of the Employer. Orders which are placed by fax are also received by mail order employees, and these faxed orders are similarly batched into units of 25 for use by the data entry employees. Mail order employees may make between five and ten calls to customers per day to verify some item of information such as an address. Currently, two mail order employees have been cross-trained to perform quality assurance work. These two employees were trained by the supervisor in the quality assurance section, and this allows the two cross-trained employees to work as quality assurance employees when their mail order work does not necessitate an eight hour day or when the quality assurance section is working beyond eight hours in a day or working on a Saturday. While work in the quality assurance section is voluntary in nature for the two cross-trained mail order employees, in the two months prior to the hearing, they both had worked in the quality assurance section four to five days each week. The mail order employees work 40 hours per week. On Monday, they are scheduled from 6:00 a.m. to 4:30 p.m.; and Tuesday through Friday, they work 7:00 a.m. to 3:30 p.m. They are paid on an hourly basis and receive the same benefits as employees in the production and maintenance departments who start work daily between 4:00 and 5:00 a.m. Each of the five departments has its own manager and, except for the human resources and maintenance departments, its own hierarchy of

supervision. All employees of the Employer receive, in an eight-hour shift, two 15-minute breaks and a 30-minute lunch. The time that breaks and lunch are taken may vary somewhat each day depending on the work load, but normally the employees in a particular department take their work breaks and lunch at the same time. The Employer has just one break room which all of its employees may use for work breaks and lunch.

The Employer employs 15 data entry employees who receive the batches of mail, compiled by the mail order employees, and then enter the information from those mail batches into the computer system of the Employer. The data entry and mail order employees work in separate enclosed office spaces along a wall of the Wilmington facility. These two offices are near, yet apart from, what are termed in the record as the front offices of the Employer where persons in the Human Resources department and receptionists work. The data entry and mail order work areas are about 25 yards from an area where inbound department employees regularly work. The data entry employees, like the mail opening employees, may also enter information into the computer system from miscellaneous mail. Data entry employees work 8:30 a.m. to 5:00 p.m. and also receive two work breaks and a half-hour lunch period. However, they tend to take their breaks and lunch at staggered times rather than all together. One data entry employee is cross-trained in receiving and seven data entry employees are cross-trained, quality assurance, which, like receiving, is in the inbound department. The cross training for these eight employees was given by supervisors in the inbound department. The seven employees cross-trained in quality assurance have each worked in that capacity four to five times per week, every week, for the two months prior to the hearing. The Employer's witness testified that in that same two month period the one data entry employee cross-trained in receiving has worked in receiving about three times per week every other week. However, the Petitioner notes in its brief that records supplied by the Employer do not reflect any receiving work performed by a data entry employee. One data entry employee is assigned to assist with questions from the returns section of the inbound department, and consequently that employee has daily contact with employees who handle returns.

The Employer has four employees who work in its MIS section, which is located inside the Wilmington facility, about ten yards from the receiving area of the inbound department adjacent to the one break area designated for all employees, and very near an entrance door which may be used by all employees. One of these MIS employees works half days from 8:00 a.m. to 12:00 noon five days a week. This employee picks up mail at 8:00 a.m. and 10:00 a.m. at the post office and brings it to the facility for the mail order employees. He may also run errands for the Employer by going to stores to secure items for the maintenance department. Daily he also spends 50 percent of his time performing maintenance work such as picking up trash and cleaning areas of the facility. In performing his errands and his daily cleaning work, this employee would have contact with the maintenance employees of the Employer. He is paid on an hourly basis and receives benefits similar to other hourly paid employees.

A second MIS employee, Lloyd Calhoun, works between 10:00 or 11:00 p.m. to 7:00 or 8:00 a.m. During this time, he prints and batches the invoices for picking. These invoices determine what goods will be picked that particular day. This employee works alone until about 4:00 a.m. when other hourly paid employees begin to arrive. After that time, he has contact with these other employees especially when he delivers the invoices he has run to the employees in the outbound department to begin their picking. At 6:00 a.m. he goes to the post office to retrieve the first of three daily mail pickups. Additionally, he is responsible for printing correspondence to customers such as a refund check, a letter or a postcard.

A third hourly paid MIS employee, Tim Laughner, works 4:00 a.m. to 1:00 p.m. Initially, each day he assists with completion of the running of the invoices. After that, he operates what is referred to as the help desk which requires him to render assistance to employees or supervisors, in the entry distribution facility who may need help with their computer or printer. This causes him to have daily contact with bargaining unit employees. The record shows that he spends about 60 percent of his time away from his office helping others. His rate of pay is equivalent to that of some production employees.

The fourth MIS employee, Nellie Webb, works 6:00 a.m. to 3:00 p.m. in the MIS area where she processes all the correspondence mailed to customers. Her only contacts are with data entry or mail order employees when about twice a week she has to go to their area to seek assistance from them to complete her work with customer correspondence.

At the time of the hearing, the Employer also had 27 to 30 temporary employees working at its facility. These temporary employees are employees of two different employment agencies who are responsible for the pay and benefits of the temporary employees. Unlike employees of the Employer, the temporary employees do not punch a time clock, but rather their work time is maintained on time sheets which they complete. Also the temporary employees receive no lunch break. Where the Employer determines that it no longer desires or needs a particular temporary employee it, communicates this to the temporary agency who in turns informs the temporary employee. Traditionally, the Employer utilizes temporary employees during its peak season of mid-September to late November. The temporary employees are informed by the Employer at the beginning of this period that if they are found to be good employees, and if a position is open, they may apply to the Employer to become a permanent employee when their work as a temporary employee is finished. From the record it appears that in the past two years, of a total 386 temporary employees sent to the Employer for work, 21 of these temporary employees were hired by the Employer as permanent employees. When a temporary employee is so hired, he is given credit for pay raise purposes for the time he worked at the Employer as a temporary employee

In support of its position that the data entry, mail order and MIS employees should be excluded from the unit herein, the Petitioner relies upon the Board's ruling in Mitchellace, Inc., 314 NLRB 536 (1994). However, I find this decision is distinguishable from the facts of the instant case. While the disputed employees do have their own distinct work space apart from production and maintenance employees, they have considerably more contact with unit employees than the employees in question in Mitchellace. Not only do many of the disputed employees on a regular basis actually work along side of unit employees when they are also performing production work due to their dual rolls as cross-trained employees, many of these disputed employees, both while performing their regular work and at break and lunch time, have daily contact with production and maintenance employees. In Cook Composites & Polymers Co., 313 NLRB 1105 (1994), another case relied upon by the Petitioner, the data entry employees in question, conversely, were located in a separate building and only had some minimal contact with bargaining unit employees. Also, the disputed employees herein, unlike in Mitchellace, have their own distinct work areas apart from the front office area. As in Mitchellace, the disputed employees are separately supervised; but, as the record reflects, each of the three departments which the Petitioner seeks to represent has its own designated supervision. Moreover, when the disputed employees are performing their cross-trained production work, they are supervised by supervisors in either the inbound or outbound departments.

Furthermore, the evidence is clear that the disputed employees share common benefits, are governed by the same work rules, and have similar pay scales and pay raise programs as do the production and maintenance employees. Besides having common terms and conditions of employment, the disputed employees and the production and maintenance employees daily perform similar or related tasks.

Specifically, employees from both groups have as their job duties the keying of information into a computer terminal which is connected to the centralized computer system of the Employer. Thus based upon the record facts, I find that the inclusion of the disputed employees herein is controlled by the reasoning of the Board in its decision in Scholastic Magazines, Inc., 192 NLRB 461, 462, (1971), wherein it found that, "[I]n our view, the Employer is engaged in a single highly integrated process, i.e., filling customers' orders,..." In the case at hand as in Scholastic Magazines, the disputed employees and the production and maintenance employees participate equally and fully in a single process of responding to the orders of customers. In so doing, both groups of employees, concerning the use of computers, perform related functions and exercise similar skills. Consequently, as the Board did in Avon Products, Inc., 250 NLRB 1479 (1980), in view of their common terms and conditions of employment, their repeated, daily contact with other unit employees, and their central role in the overall order flow process of the Employer, I find the data entry, mail order and MIS employees should be included in the unit consisting of the production and maintenance employees of the Employer. Barbara George, Inc., 273 NLRB 1239 (1984); S & S Parts Distributors Warehouse, 277 NLRB 1293 (1985); Neodata Product/Distribution, 312 NLRB 987 (1993).

While in the past, a small percentage of the temporary employees who worked at the facility of the Employer were hired as permanent employees by the Employer, I do not find that this evidence would support a finding that the current temporary employees working at the facility of the Employer have a reasonable expectation of continued employment with the Employer once its peak season ceases in November. Rather, the record demonstrates that these temporary employees are truly seasonal employees who, it has not been shown, will in the future work in any capacity at the facility of the Employer once the peak season of the Employer ends. As seasonal employees, with no reasonable expectation of continued employment by the Employer, I find the temporary employees should not be included in the bargaining unit found appropriate herein. Macy's East, 327 NLRB No. 22 (1998) and cases cited therein.

Inasmuch as the unit found herein is larger than that sought by the Petitioner, I shall allow the Petitioner 14 days in which to submit the additional showing of interest necessary.

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